



South East Cornwall Multi Academy Regional Trust

Staff Capability Policy

| Date | Changes |
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| 3/9/17 | Original draft circulated to LGCs and Trust Board |
| 26/3/18 | All SMART-Trust policies which unions requested further consultation on were removed from sites and previous policies reinstated to enable establishment of a JCNC and a fresh round of consultation |
| 14/12/18 | Updated draft circulated |
| 13/03/19 | Copy sent to senior staff, unions, LGC, legal and Trust Board inviting comments |
| | Consultation with unions in JCNC meeting at Liskeard |
| 17/06/19 | Recommended by People Committee for approval by Trust Board |
| 22/07/19 | Approved by Trust Board |

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Contents

| | |
|--|---|
| Introduction | 3 |
| Formal capability meeting | 4 |
| Monitoring and review period following a formal capability meeting | 5 |
| Second Formal Capability meeting | 6 |
| Final Written Warning | 6 |
| Third Formal Capability Meeting - Decision meeting | 6 |
| Final Scrutiny and Dismissal Hearing | 7 |
| Appeal | 7 |
| General Principles Underlying This policy | 7 |

Introduction

There is an extremely strong commitment throughout SMART to ongoing training and development for all staff to provide them with the skills and support they need to carry out their role effectively. This will involve regular reviews and support based on clear objectives.

As part of day to day management, line managers may from time to time have discussions about performance with a member of staff and these discussions do not form part of the Capability process.

This procedure will be used for staff when, despite appropriate staff development and clear objectives agreed through the appraisal process, serious concerns emerge regarding their performance which the appraisal and staff management process has not been able to address and/or usual appraisal processes with a frequency of between one and two points of feedback per term may be deemed insufficient to correctly support the member of staff.

Capability does not apply to Newly Qualified Teacher (NQT), whose performance will be managed through the NQT induction process.

It is strongly recommended that this procedure is only implemented where the appraisal process and appropriate support provided have failed to improve the performance to the required standards. Only after sufficient, recorded evidence exists from triangulated sources should the capability procedure be implemented

Being subject to a capability procedure should never be surprise to a member of staff. Any concerns should have been raised with the member of staff in advance as part of the appraisal process. If it became apparent during or at the end of the appraisal period, that the member of staff's overall performance was below acceptable standards the appraiser will ensure the Headteacher is informed (this may be via their line manager).

The Headteacher will appoint a suitably senior member of staff to conduct an informal support process. This may be the current appraiser where appropriate. This appointee will meet with the member of staff to discuss the nature and level of the concerns, confirm the content of the discussion in writing and give the member of staff the opportunity to reflect on it before another meeting.

A second meeting, arranged with adequate notice, will be held to determine what increased support should/will be given to the member of staff, the kind of improvement required, the period for improvement, how improvement would be assessed and when the situation would be reviewed. The appointee should explain to the member of staff what would happen in the event of the member of staff not meeting the required standards.

During the appraisal process consideration should have been given to any known mitigating or personal circumstances (including a health condition) which might explain a dip in performance and similar consideration should continue to be given to such circumstances in relation to this procedure.

If, following a program of informal support within the appraisal process, the Headteacher continues to be concerned about the member of staff's performance, then they will appoint a suitably senior member of staff to conduct a formal capability process. This appointee will arrange a formal capability meeting. Such a meeting is the first step of a process that will either result in the member of staff addressing any concerns and returning to the normal appraisal process or can result ultimately in the dismissal of the member of staff. Where the formal capability process is instigated, the performance management/appraisal process will be suspended. This policy sets out these stages and the processes surrounding them.

Capability is a process which is designed primarily to support employees in improving their practice.

Formal capability meeting

This meeting is intended to establish the facts. It will be conducted by...

| Group | Attendees of the formal capability meeting |
|--------------------|--|
| CEO | Chair of Trust Board and HR Link Trustee, Clerk |
| CBU staff | CEO together with an administrator or Clerk to make notes. If a senior member of staff has been appointed to conduct the formal capability process they should also be present as should the work colleague or union representative who has been certified by their union as being competent, if requested. |
| Headteacher | CEO together with an administrator or Clerk to make notes together with the work colleague or union representative who has been certified by their union as being competent, if requested. |
| Teaching Staff | Headteacher together with an administrator or Clerk to make notes. If a senior member of staff has been appointed to conduct the formal capability process they should also be present as should the work colleague or union representative who has been certified by their union as being competent, if requested. |
| Non Teaching Staff | Headteacher or a member of staff to whom this responsibility has been delegated together with an administrator to make notes. If a senior member of staff has been appointed to conduct the formal capability process they should also be present as should the work colleague or union representative who has been certified by their union as being competent, if requested. |

The member of staff will receive at least five school days' notice of the first formal capability meeting. The notification will contain information about the performance concerns and the possible consequences. It will also contain copies of any written evidence; the details of the time and place of the meeting; and will advise the member of staff of their right to be accompanied by a work colleague, or union representative who has been certified by their union as being competent, if requested.

The member of staff should prepare their response and will have an opportunity to present their response at the formal capability meeting.

The meeting allows the member of staff, accompanied by a work colleague or trade union representative who has been certified by their union as being competent, if they wish, to respond to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.

The person conducting the meeting may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end. The person conducting the meeting may also adjourn the meeting for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.

In other cases, the meeting will continue. During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:

- identify the shortcomings, for example in the case of teachers, which of the professional standards expected of teachers are not being met;
- give clear guidance on the improved standard of performance needed to ensure that the member of staff can be removed from formal capability procedures and the timescale and success criteria for current or new objectives.
- explain the support that will be provided to help the member of staff improve their performance;
- negotiate and seek to agree an action plan and timetable for support and improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but should be no less than 8 calendar weeks.
- provide the member of staff with a written warning that failure to improve within the set period could lead to dismissal. In exceptional cases, this warning could skip the step which first involves a 'Formal Warning' and move straight to being issued a 'Final Written Warning'.

Notes will be taken of formal meetings and a copy sent to the member of staff including the timetable for support and improvement populated with the correct dates. A copy of this timetable for support and improvement must also be sent to the Headteacher.

Where a warning is issued, the member of staff will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning (see appeals section of this policy).

Monitoring and review period following a formal capability meeting

Following the formal capability meeting and during the agreed timetable for improvement, the performance of the member of staff will be monitored and they will be provided with written evaluations, guidance and support to help them achieve the required outcomes. This is known as the 'monitoring and review' period.

If the warning issued in the Formal Capability Meeting was a 'Final Written Warning' then at some point during or after this monitoring and review period, the member of staff will be invited to a decision meeting.

If the warning issued was a 'Formal Written Warning' then the member of staff will be invited to a Formal Review Meeting.

Second Formal Capability meeting

As with the first formal capability meeting, at least five school days' notice will be given and the notification will give details of the time and place of the meeting and will advise the member of staff of their right to be accompanied by a work colleague or a trade union representative who has been certified by their union as being competent. As before, notes will be taken of formal meetings and a copy sent to the member of staff.

The person conducting the meeting has three options as follows:

- 1- If they are satisfied that the member of staff has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start.
- 2- If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period;
- 3- If insufficient improvement has been made during the monitoring and review period, the member of staff will receive a final written warning.

Final Written Warning

The final written warning will mirror any previous warnings that have been issued. The member of staff will be informed in writing that failure to achieve an acceptable standard of performance (within the 8 calendar week timescale), may result in dismissal. A further programme of support will be negotiated and the procedure and time limits for appealing against the final warning.

Third Formal Capability Meeting - Decision meeting

At least five school days' notice will be given and the notification will give details of the time and place of the meeting and will advise the member of staff of their right to be accompanied by a work colleague or a trade union representative who has been certified by their union as being competent.

There are two possible outcomes:

If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the appraisal process will re-start.

If, however, a new formal capability meeting occurs within 6 months at which it is deemed there are sufficient grounds for a new monitoring and review period then the warning issued will skip directly to the first formal stage.

If performance remains unsatisfactory the person conducting the meeting will recommend that the member of staff will be dismissed and give their reasons in writing to those who will scrutinise the process and confirm the decision.

Final Scrutiny and Dismissal Hearing

Within 10 school days the member of staff will be invited to a dismissal hearing with a panel of Governors or Trustees who have had no involvement in the case so far and given 10 school days' notice of the date of this meeting.

The invitation to the meeting should include all the evidence and documentation collected during the process and should advise the member of staff to bring a work colleague or union representative who has been certified by their union as being competent, if requested. The member of staff should be able to submit further evidence and should notify the clerk to the governors ahead of the meeting. The Headteacher/CEO will be able to provide their evidence and the member of staff should be able to respond or provide further evidence. The panel's decision will be communicated to the member of staff in writing within five school days and they will be informed of their right of appeal to an independent panel of governors.

Appeal

If a member of staff feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing against the decision within five school days of receipt of written notification of the decision, setting out at the same time the grounds for appeal. Appeals will be heard without unreasonable delay, a date, venue and time will be provided via written response within ten school days of receipt of the appeal. The same arrangements for notification and right to be accompanied by a work colleague or union representative who has been certified by their union as being competent, will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the member of staff.

The appeal will be dealt with impartially by a panel of governors who have had no involvement in the case. The member of staff will be informed in writing of the results of the appeal hearing as soon as possible.

General Principles Underlying This policy

ACAS Code of Practice on Disciplinary and Grievance Procedures

The policy will be implemented in accordance with the provisions of the ACAS Code of Practice.

Confidentiality

The capability processes will be treated with confidentiality.

Consistency of Treatment and Fairness

The Trust Board is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments for

disabled employees. The Trust Board is aware of the guidance on the Equality Act issued by the Department for Education.

Grievances

Where a member of staff raises a grievance during the capability procedure the capability procedure may be temporarily suspended in order to deal with the grievance.

Sickness

If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the school's absence policy and will be referred immediately to the occupational health service to assess the member of staff's health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures.

Monitoring and Evaluation

The Local Governing Committee and Headteacher will monitor the operation and effectiveness of the school's capability arrangements. The Trust Board and CEO will monitor the system of checks and balances in place at each school for ensuring policies are enacted.